

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:	:	
	:	
Sylvester L. Price	:	Case No.: 16-11430
Sherrie M. Price AKA Sherrie M.	:	Chapter 13
McAfee	:	Judge Jeffery P. Hopkins
	:	*****
Debtor(s).	:	
	:	

**MOTION OF U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF10 MASTER
PARTICIPATION TRUST FOR RELIEF FROM STAY ON FIRST MORTGAGE FOR
REAL PROPERTY LOCATED AT 6620 HIGHLAND AVE, CINCINNATI, OH 45236**

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust (the "Creditor") in this proceeding under Chapter 13 of the Bankruptcy Code, and pursuant to 11 U.S.C. Section 362(d) of the Bankruptcy Code, Rules 4001, 9013 and 9014 of the Bankruptcy Rules and Local Bankruptcy Rules 4001-1 respectfully moves this Court for relief from the automatic stay imposed by 11 U.S.C. Section 362(a) in order to proceed with a state court proceeding to foreclose on the property located at 6620 Highland Ave, Cincinnati, OH 45236. The grounds upon which this Motion is made are more fully set forth in the attached Memorandum in Support.

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On January 9, 2002, Sherrie M. Price AKA Sherrie M. McAfee obtained a loan from Beneficial Ohio Inc. in the amount of \$66,952.49. Such loan was evidenced by a

Promissory Note dated January 9, 2002 (the "Note"), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, Sylvester L. Price and Sherrie M. Price AKA Sherrie M. McAfee (collectively "Debtor") executed a Mortgage dated January 9, 2002 (the "Mortgage"). The Mortgage granted a lien on the property owned by Debtor, located at 6620 Highland Ave, Cincinnati, OH 45236 (the "Property") and more fully described in the Mortgage. Sherrie McAfee, unmarried, acquired title to the Property by virtue of a fiduciary deed from Forrest Robert Bivens, administrator of the estate of Ruby Jeraldine Bivens (also known as Ruby Geraldine Bivens), deceased, dated June 30, 1989, filed July 13, 1989, recorded at Official Instrument Number 89-86092, Recorder's Office, Hamilton County, OH. A copy of said Deed is attached as Exhibit B.
4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Hamilton County Recorder on January 10, 2002. A copy of the Mortgage is attached as Exhibit C. The lien is the first lien on the Property.
5. The Note was transferred as follows:
 - a. from Beneficial Ohio Inc. to _____. The transfer is evidenced by the allonge attached to this Motion as Exhibit A. Because the allonge is in blank and Creditor is in possession of the original Note, Creditor is entitled to enforce the instrument.
6. The Mortgage was transferred as follows:
 - a. from BENEFICIAL FINANCIAL I INC., SUCCESSOR BY MERGER TO BENEFICIAL OHIO INC. to U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF10 MASTER PARTICIPATION TRUST, dated October 23, 2017. The transfer is evidenced by the document attached to this Motion as Exhibit D.
7. The value of the Property is \$112,700.00. This valuation is based on the Hamilton County Auditor's tax record which is attached as Exhibit E.

8. As of November 24, 2017, there is currently due and owing on the Note the principal balance of \$48,431.06, plus interest accruing thereon at the rate of 11.244% per annum from April 6, 2016.
9. Other parties known to have an interest in the Property are as follows:
 - a. the Hamilton County Treasurer, in an unknown amount;
 - b. Beneficial Mortgage Company of Ohio is believed to be the holder of a 2nd Mortgage on the Property with an approximate payoff of \$50,013.00 per Debtor's Schedule D.Attached as Exhibit F is Debtor's Schedule D.
10. The Creditor is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reason(s):
 - a. Debtor has no equity in the Property and the Property is not needed by the Debtor for its reorganization. Creditor believes that the Property has a value of \$112,700.00. Including the Creditor's lien, there are liens in an aggregate amount of \$119,642.32 on the Property.
 - b. Debtor has failed to make periodic payments to Creditor since the commencement of this bankruptcy case and is due for the months of April 2016 through October 2017, which unpaid payments are in the aggregate amount of \$12,349.62 through November 24, 2017. The total provided in this paragraph cannot be relied upon as a postpetition reinstatement quotation.
11. Creditor has completed the worksheet attached as Exhibit G.

WHEREFORE, Creditor prays for an Order from the Court granting Creditor relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code to permit Creditor to proceed under law and for such other and further relief to which the Creditor may be entitled.

Respectfully submitted,

/s/ Adam B. Hall

Adam B. Hall (0088234)
Edward H. Cahill (0088985)
John R. Cummins (0036811)
Stephen R. Franks (0075345)
Manley Deas Kochalski LLC

P.O. Box 165028
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Telephone: 614-220-5611
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Attorneys for Creditor
The case attorney for this file is Adam B.
Hall.
Contact email is abh@manleydeas.com

NOTICE OF MOTION

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust has filed papers with the court to obtain relief from stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to:

Clerk of the United States Bankruptcy Court
Atrium Two, Suite 800
221 East Fourth Street
Cincinnati, OH 45202

OR your attorney must file a response using the court's ECF system.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

Manley Deas Kochalski LLC, Attention: Adam B. Hall, P.O. Box 165028 Columbus, OH 43216-5028

Office of U.S. Trustee, Southern District of Ohio, Party of Interest, 36 East Seventh Street, Suite 2030, Cincinnati, OH 45202

Margaret A. Burks, 600 Vine Street, Suite 2200, Cincinnati, OH 45202
cincinnati@cinn13.org

John W. Rose, Attorney for Sylvester L. Price and Sherrie M. Price AKA Sherrie M. McAfee, 35 East Seventh Street, Suite 610, Cincinnati, OH 45202-2403
johnwrose@fuse.net

Sylvester L. Price, Sherrie M. Price AKA Sherrie M. McAfee, 7063 Lakota Ridge Drive, Hamilton, OH 45011

Hamilton County Treasurer, County Administration Building, 138 East Court Street, Cincinnati, OH 45202

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Relief from Stay on First Mortgage for Real Property Located at 6620 Highland Ave, Cincinnati, OH 45236 was served **electronically** through the court's ECF System at the email address registered with the court:

Office of U.S. Trustee, Southern District of Ohio, Party of Interest, 36 East Seventh Street, Suite 2030, Cincinnati, OH 45202

Margaret A. Burks, 600 Vine Street, Suite 2200, Cincinnati, OH 45202,
cincinnati@cinn13.org

John W. Rose, Attorney for Sylvester L. Price and Sherrie M. Price AKA Sherrie M. McAfee, 35 East Seventh Street, Suite 610, Cincinnati, OH 45202-2403, johnwrose@fuse.net

and by ordinary U.S. mail on January 2, 2018 addressed to:

Sylvester L. Price and Sherrie M. Price AKA Sherrie M. McAfee, 7063 Lakota Ridge Drive, Hamilton, OH 45011

Sylvester L. Price and Sherrie M. Price AKA Sherrie M. McAfee, 6620 Highland Ave, Cincinnati, OH 45236

Hamilton County Treasurer, County Administration Building, 138 East Court Street, Cincinnati, OH 45202

Beneficial Mortgage Company of Ohio, 2700 Sanders Road, Prospect Heights, IL 60070

/s/ Adam B. Hall

Adam B. Hall